IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.316 OF 2006

Ramu Chandrukumbhar & Ors. .. Petitioners

Versus

Mahadev Dudh Vyavsayik Sanstha

Maryadit and Anr. .. Respondents

Mr.V.Motariya for petitioners

Mr.N.V.Bandivadekar for respondent Nos. 1 and 2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 13th February 2006.

P.C.

. This petition under Article 227 of the

Constitution of India prays for the following reliefs:-

> "(a) Allow the examination of Court Commissioner as the witness of the plaint on point of Court Commissioner's report by giving opportunity to cross examine by the respondents.
>
> (b) direct the learned Civil Judge, Junior Division Ajara to read the Court Commissioner report which includes panchanama and map and not to read only covering letter of Court Commissioner as per the provision of C.P.C. alternatively;"

2. I have heard Mr.Motaria for petitioner and Mr.Bandivadekar for respondents. As far as prayer clause (a) of the petition is concerned,

in my view, that cannot be granted at this stage and it would be open for petitioners to apply to the trial court in that behalf. In any event, Mr.Motaria, on instructions from petitioners states that petitioners are not desirous of examining Court Commissioner as witness. Therefore, as far as this prayer is concerned, grievance of petitioner does not survive.

3. My attention is invited by Mr.Motaria to the fact that the learned Judge has, while taking documents produced by parties on record, as far as Commissioner’s report is concerned, only exhibited the covering letter forwarding report but the report as such should have been exhibited. He submits that none dispute the fact that a Court Commissioner was appointed. He has forwarded his report which is annexed to the covering letter. If the covering letter is taken on record, no useful purpose will be served because, it is the Commissioner’s report which

must form part of record in the suit.

4. I have perused the impugned order and the application exhibit 140. In my view, the said application cannot be granted in its entirety. As far as examination of Court Commissioner is concerned, that aspect is already clarified by me above.

5. However, the grievance of petitioners insofar as exhibiting the Court Commissioner's report is concerned, the same appears to be justified. Court Commissioner's report is dated 20th August 1998. The same refers to a Panchanama as well as a map. In my view, the report as well as Panchanama and map should be taken on record and exhibited as part of Commissioner's report. No prejudice would be caused by merely exhibiting the report which refers to the map and panchanama admittedly.

6. The apprehension expressed by Mr.Bandivadekar as far as the contents of the report and panchanama and authenticity and genuineness of the map is concerned, in my view, that aspect must be left to be gone into by the trial court. It will be for the petitioners to take appropriate steps and because the report is exhibited does not mean that the contents thereof i.e. Panchanama and Map would stand proved. Needless to state that contentions of both sides in that behalf are expressly kept open. Petition disposed of.

(S.C.DHARMADHIKARI, J)